

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOHN E. MITCHELL,)	Case No.: 1:22-cv-00006 JLT EPG (PC)
)	
Plaintiff,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATIONS, GRANTING
v.)	DEFENDANT’S MOTION TO DISMISS, AND
)	DISMISSING THE OFFICIAL CAPACITY CLAIM
T. RODRIGUEZ,)	AGAINST RODRIGUEZ
)	
Defendant.)	(Docs. 38, 44)
)	
)	

John Mitchell is a state prisoner who asserts that his civil rights were violated by correctional officer Rodriguez, who Mitchell contends deprived him of a silver chain and medallion without a legitimate penological purpose. (*See* Docs. 24, 29.) Rodriguez seeks dismissal of “Plaintiff’s claims for damages against [Rodriguez] in his official capacity” as barred under the Eleventh Amendment. (Doc. 48.) Mitchell indicated he “agree[d] to ... dismiss the claim against the defendant as to the Eleventh Amendment.” (Doc. 43 at 1.)

On February 7, 2023, the magistrate judge observed that the Eleventh Amendment bars suits for “damages or injunctive relief against a state, an arm of the state, its instrumentalities, or its agencies.” (Doc. 44 at 2, quoting *Fireman’s Fund Ins. Co. v. City of Lodi, Cal.*, 302 F.3d 928, 957 n. 28 (9th Cir. 2002).) Therefore, the magistrate judge found Mitchell could not proceed with claim against Rodriguez in his official capacity. (*Id.*) The magistrate judge recommended the unopposed motion to dismiss be granted and the matter proceed against Rodriguez in his individual capacity only. (*Id.*)

1 The Court served the Findings and Recommendations on all parties. It notified them that
2 objections, if any, were to be filed within 14 days of the date of service. (Doc. 44 at 2.) In addition, the
3 Court advised the parties “that failure to file objections within the specified time may result in the
4 waiver of rights on appeal.” (*Id.* at 3, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir.
5 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).) The parties did not file objections, and
6 the time to do so has expired.

7 According to 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court conducted a de novo
8 review of this case. Having carefully reviewed the entire matter, the Court concludes the Findings and
9 Recommendations are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 10 1. The Findings and Recommendations issued on February 7, 2023 (Doc. 44) are
11 **ADOPTED** in full.
- 12 2. Defendant Rodriguez’s motion to dismiss (Doc. 38) is **GRANTED**.
- 13 3. Plaintiff’s official capacity claim against Rodriguez for damages is **DISMISSED**.
- 14 4. This case shall proceed on Plaintiff’s First Amendment Free Exercise claim against
15 defendant Rodriguez in his individual capacity.
- 16 5. Defendant Rodriguez **SHALL** file an answer within 14 days of the date of service of
17 this order.

18
19 IT IS SO ORDERED.

20 Dated: **March 15, 2023**


UNITED STATES DISTRICT JUDGE